

Office of Personnel Management

§ 575.305

under 5 U.S.C. 5343(f) or environmental differentials under 5 U.S.C. 5343(c)(4).

Service agreement means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment with the agency in return for payment of a retention incentive.

§ 575.303 Eligible categories of employees.

(a) Except as provided in § 575.304, an Executive agency may pay a retention incentive to a current employee who holds—

(1) A General Schedule position paid under 5 U.S.C. 5332 or 5305 (or similar special rate authority);

(2) A senior-level or scientific or professional position paid under 5 U.S.C. 5376;

(3) A Senior Executive Service position paid under 5 U.S.C. 5383 or a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151;

(4) A position as a law enforcement officer, as defined in 5 CFR 550.103;

(5) A position under the Executive Schedule paid under 5 U.S.C. 5311–5317 or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule;

(6) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3); or

(7) Any other position in a category for which payment of retention incentives has been approved by OPM at the request of the head of an executive agency.

(b) Except as provided in § 575.304, a legislative agency may pay a retention incentive to a current employee who holds a General Schedule position paid under 5 U.S.C. 5332 or 5305 (or similar special rate authority).

[70 FR 25747, May 13, 2005, as amended at 72 FR 67839, Dec. 3, 2007]

§ 575.304 Ineligible categories of employees.

An agency may not pay a retention incentive to an employee in—

(a) A position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

(b) A position in the Senior Executive Service as a noncareer appointee (as defined in 5 U.S.C. 3132(a)(7));

(c) A position excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or

(d) A position not otherwise covered by the exclusions in paragraphs (a), (b), and (c) of this section—

(1) To which an individual is appointed by the President without the advice and consent of the Senate, except a Senior Executive Service position in which the individual serves as a career appointee (as defined in 5 U.S.C. 3132(a)(4));

(2) Designated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members;

(3) In which the employee is expected to receive an appointment as the head of an agency; or

(4) To which an individual is appointed as a Senior Executive Service limited term appointee or limited emergency appointee (as defined in 5 U.S.C. 3132(a)(5) and (a)(6), respectively) when the appointment must be cleared through the White House Office of Presidential Personnel.

[70 FR 25747, May 13, 2005, as amended at 78 FR 49364, Aug. 14, 2013]

§ 575.305 Applicability to employees.

(a) An agency may pay a retention incentive to an individual employee under the conditions prescribed in this subpart when the agency determines that—

(1) The unusually high or unique qualifications (*i.e.*, competencies) of the employee or a special need of the agency for the employee's services makes it essential to retain the employee; and

(2) The employee would be likely to leave the Federal service in the absence of a retention incentive.

(b) Except as provided in paragraph (c) of this section, an agency may pay a retention incentive to a group or category of employees under the conditions prescribed in this subpart when the agency determines that—

(1) The unusually high or unique qualifications (*i.e.*, competencies) of

§ 575.306

5 CFR Ch. I (1–1–16 Edition)

the group or category of employees or a special need of the agency for the employees' services makes it essential to retain the employees in that group or category; and

(2) There is a high risk that a significant number of the employees in the group would be likely to leave the Federal service in the absence of a retention incentive.

(c) An agency may not include in a group retention incentive authorization an employee covered by § 575.303(a)(2), (a)(3), or (a)(5) or those in similar categories of positions approved by OPM to receive retention incentives under § 575.303(a)(7).

(d) A retention incentive may be paid only when the employee's rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) is at least "Fully Successful" or equivalent.

[70 FR 25747, May 13, 2005, as amended at 78 FR 49364, Aug. 14, 2013]

§ 575.306 Authorizing a retention incentive.

(a) *Authority of authorized agency official.* An authorized agency official retains sole and exclusive discretion, subject only to OPM review and oversight, to—

(1) Determine when the unusually high or unique qualifications (*i.e.*, competencies) of an employee or a special need of the agency for the employee's services makes it essential to retain the employee and when the employee would be likely to leave the Federal service in the absence of a retention incentive;

(2) Determine when a group or category of employees has unusually high or unique qualifications (*i.e.*, competencies) or when an agency has a special need for the employees' services that makes it essential to retain the employees in that group or category and when there is a high risk that a significant number of employees in the group would be likely to leave the Federal service in the absence of a retention incentive;

(3) Approve a retention incentive for an employee (or group or category of employees, except as prohibited by

§ 575.305(c)) in a position (or positions) listed in § 575.303;

(4) Establish the criteria for determining the amount of a retention incentive and the length of a service period under §§ 575.309 and 575.310, respectively;

(5) Request a waiver from OPM of the limitation on the maximum amount of a retention incentive for an employee (or group or category of employees) under § 575.309(e); and

(6) Establish the criteria for terminating a service agreement or retention incentive payments under § 575.311.

(b) *Factors for authorizing a retention incentive for an individual employee.* An agency must consider the following factors, as applicable to the case at hand, in determining whether the unusually high or unique qualifications of an employee or a special need of the agency for an employee's services makes it essential to retain the employee and that the employee would be likely to leave the Federal service in the absence of a retention incentive:

(1) Employment trends and labor market factors such as the availability and quality of candidates in the labor market possessing the competencies required for the position and who, with minimal training, cost, or disruption of service to the public, could perform the full range of duties and responsibilities of the employee's position at the level performed by the employee;

(2) The quality and availability of the potential sources of employees that are identified in any agency succession plan (*e.g.*, succession plans required for leadership positions), who possess the competencies required for the position, and who, with minimal training, cost, and disruption of service to the public, could perform the full range of duties and responsibilities of the employee's position at the level performed by the employee;

(3) The success of recent efforts to recruit candidates and retain employees with competencies similar to those possessed by the employee for positions similar to the position held by the employee;

(4) Special or unique competencies required for the position;

(5) Agency efforts to use non-pay authorities to help retain the employee